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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/094,279	06/09/1998	GUANGLIN SUN	33343-01	8189

28425 7590 01/18/2002

INTELLECUTAL PROPERTY DEPARTMENT
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EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 01/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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25

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 10/18/01

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 36-61,63-78,81-93 & 95-98 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 36-61,63-78,81-93 & 95-98 is/are rejected.
☐ Claim(s) _____ is/are objected to.
☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
☐ Interview Summary, PTO-413
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

Receipt is acknowledged of Power of Attorney (8/14/01) and Amendment (10/19/01).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The attempt to incorporate subject matter into this application by reference to foreign patents is improper because the incorporation of essential material in the specification by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).

Claim 66 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Abbreviations; DiNitro Aniline (DNA); should be spelled out at first appearance in claims; likewise with RNA.

Claims 36-44, 46-48, 52-54, 56, 60, 61, 63-70, 84, 87-89, 92, 93 and 95-98 are rejected under 35 U.S.C. 102(e) as being anticipated by Rheume et al . .

The rejection of record is maintained.

Polymers, partially solubilizable, pH dependent, with free carboxylic acid groups (line 54-56, col. 3, top, col. 4) are so described at col. 3, line 1-15, present within the instantly claimed range of a pesticidal matrix (line 34). Example 1 shows use of base to adjust pH over 4.5. acid or base maybe used to provide desired pH sensitivity (col. 4, line 52+. Preferred polymers are those of instant claim 90—acrylic acid and acrylate, and methacrylic acid/methacrylate copolymers (col. 4, lines 36-42). Example 1 shows the process steps of the instant invention: preparing an aqueous mix of pesticide, polymer and additives, and drying. The degree of free functional charged groups is (col. 4, line 51-line 14, col. 5) determinable as desired by the artisan (col. 4, top) as, for instance, a function of desired disperability or solubility. Rheume provides polymer matrix and insecticide ; since additives known can be added (col. 6, bottom-col. 7, top) they need not be added; as in instant claim 44.

Applicant's arguments filed 10/15/01 have been fully considered but they are not persuasive. Applicant argues essentially insoluble refers to pH dependent polymers, which we accept. However, the abbreviation of DNA, RNA is still considered open to misinterpretation and in bad form. As to the art, applicant argues Rheume is not the same as applicant's process—we see no difference and no criticality in applicant's averred distinctions. Rheume presents the instant invention is essence. See col. 4, bottom, top of col. 5; the polymers can be particially soluble. Those claims no anticipated present well known adjuvants and ingredients known for the purpose for which they are used, and thus not a basis for patentability. For instance, substitution of

ammonium hydroxide for sodium in Rheume, since ammonium is included in Rheume generic "base" (line 63, col. 4) would meet instant claim 43.

We have re-instated prior rejections.

Claims 36-61, 63-78, 81-93, 95-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller 5662891 or Bohm et al 4948586 or Fakhruddin EPO 697170 in view of Rheume et al 5560909.

The rejection of 5/17/00 is maintained.

Miller shows it is known to utilize stilbene (col. 23, line 44) compounds to enhance baculovirus activated (col. 5, 6) with plasticizers, UV protector (charcoal-carbon black) and glidant, or flow agent, talc-(col. 15, line 51-54) prepared as of the instant claims, with the instant pH dependent polymers, although not partially solubilized. The solubilization is not in evidence as critical; the preparation of the pesticide matrix with adjuvants is shown, and shown as known (col. 15, 16). Bohm also show (example 1) the use of the instant polymers and adjuvants, to provide form aqueous dispersion as of the instant claim. Although partial solubilization is not stated, in fact the product is a sticky powder, as would be the result of such treatment. So does Fakhruddin, using blacophor BBH, PEG, charcoal, eudragit and V8VEGTDL prepared form aqueous dispersion, with ammonium hydroxide (Example 1). The instant (p. 8) preferred polymer, solubilization pH 75.5, ester/COOH 1:1 to 1:2 is shown in Example 1: Eudragit S100, in the instant process.

The question remains as to the particular insecticidal virus; the prior art of record shows preparation without criticality in the process, or in the matrix resulting, to the

particular RNA or DNA virus. Neither does the instant invention. Thus, we find the inclusion of a particular virus as a modification determinable by the artisan to control insect pests known to be susceptible to specific viruses, with the specific viruses.

Claims 36-61, 63-69, 71-75, 81-93, 95-98 are rejected under 35 U.S.C. 102(b) as being anticipated by Fakhruddin EPO 697170.

See Example 1, this is the procedure of applicant's example 2 except for triethylcitrate instead of PEG. PEG may be used (page 4, lines 18-20), as can magnesium stearate glidants (line 55, p. 4).

The aspects of the invention which are not seen as obvious or anticipated, constitute the claim 36 process with claims 82 and claim 37 limitations and claim 96 pathogens. Likewise, claim 88 is seen as requiring a product by process presentation, with insertion of claim 36, 37, 82 and 96 limitations.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday-Friday 7 am-5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy:mv
January 9, 2002



NEIL S. LEVY
PRIMARY EXAMINER